

STATE OF INDIANA)
COUNTY OF PORTER)

IN THE PORTER SUPERIOR COURT

Exhibit D

GREG SCHAFER and
CARLOTTA HOLMES,
Individually and on Behalf of All
Others Similarly Situated,
Plaintiffs,

) THE HONORABLE REX KEPNER,
) SPECIAL JUDGE

) CASE NO. 64D02-1705-CT-4698

) CLASS ACTION

vs.

) JURY DEMAND

) SHOREWOOD FOREST UTILITIES, INC.,
) GREG COLTON, DAN CLARK,
) KEN BUCZEK, and TERRY ATHERTON,

) Defendants.

PLAINTIFFS' MOTION FOR ENTRY OF CONSENT JUDGMENT AND
FOR SETTING OF SCHEDULING CONFERENCE

Come now Plaintiffs, Greg Schafer and Carlotta Holmes, by counsel, Tim Schafer and Glenn S. Vician, and file their Motion for Entry of Consent Judgment and for setting of Scheduling Conference, and state:

1. On July 24, 2020, the Plaintiffs/Class Representatives, Greg Schafer and Carlotta Holmes, and the Defendant, Shorewood Forest Utilities, Inc., filed of record a Stipulation for Entry of Consent Judgment, with a related filing of an Assignment, which will resolve matters between those specific parties upon approval and entry of the Consent Judgment by the Court.
2. The only parties that have standing with respect to the submitted Consent Judgment are the Plaintiffs/Class Representatives, and the specific Defendant, Shorewood Forest Utilities, Inc.

3. Pursuant to the Porter County Local Rules, LR64-TR05-3300.80, the date for any Defendant response to the proposed Stipulation was ten (10) days after July 24, 2020, and there has been no responsive pleading or memorandum filed by any parties with respect to such Stipulation for Entry of the Consent Judgment.
4. Plaintiffs respectfully request that the Court sign and file of record the submitted Consent Judgment with respect to the Defendant, Shorewood Forest Utilities, Inc.
5. Plaintiffs further note for the record that the parties have been engaged in on-and-off mediation sessions between September, 2019 and July, 2020, but there has been no current settlement proposal offered by the remaining Defendants, Atherton, Colton, Buczek and Clark during August, 2020.
6. Plaintiffs submit that good cause exists for the Court to set a Pre-trial Conference or Scheduling Conference for the purpose of setting a Jury Trial as to the claims that are pending against the remaining Defendants, Atherton, Colton, Buczek and Clark.

WHEREFORE, Plaintiffs respectfully request the Court sign and enter of record the Consent Judgment submitted by the Plaintiffs/Class Representatives and the Defendant, Shorewood Forest Utilities, Inc., and that the Court further set a Pre-trial Conference or Scheduling Conference for the purpose of setting a Jury Trial as to the claims that are pending against the remaining Defendants, Atherton, Colton, Buczek and Clark, and enter all other appropriate relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 10th day of August, 2020, service of a true and complete copy of the Plaintiffs' Motion for Entry of Consent Judgment and for setting of Pre Trial Conference was served upon all parties of record who is set up for E-Service, through electronic filing using the IEFS.

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Attorney No. 954-45
Attorney for Plaintiffs

STATE OF INDIANA)	IN THE PORTER SUPERIOR COURT
) SS.	
COUNTY OF PORTER)	SITTING AT VALPARAISO, INDIANA
		The Honorable Rex Kepner,
		Special Judge
GREG SCHAFER and CARLOTTA)	
HOLMES, Individually and on Behalf of)	
All Others Similarly Situated,)	CASE NO. 64D02-1705-CT-4698
)	
Plaintiffs)	
)	CLASS ACTION
v.)	
)	
SHOREWOOD FOREST UTILITIES, INC.,)	
GREG COLTON, DAN CLARK,)	
KEN BUCZEK, and TERRY ATHERTON,)	
)	
Defendants)	

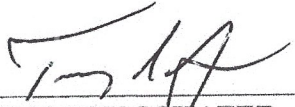
**STIPULATION FOR ENTRY OF
JUDGMENT BY CONSENT AGAINST DEFENDANT**

It is hereby stipulated and agreed by plaintiff, Greg Schafer, individually and on behalf of all others similarly situated, and defendant, Shorewood Forest Utilities, Inc., in the above entitled action, in accordance with an agreement entered between those parties in the form of an Assignment and Covenant Not to Execute, that judgment by consent in favor of the plaintiffs and against defendant, Shorewood Forest Utilities, Inc., be entered in the amount of Five Million Dollars-\$5,000,000.00 in damages, with post-judgment interest to accrue from and after the date of entry of judgment, and that each of said parties shall bear their own costs herein.

WHEREFORE, the plaintiffs, Greg Schafer, individually and on behalf of all others similarly situated, and defendant, Shorewood Forest Utilities, Inc., respectfully move the Court to enter judgment accordingly against the defendant, Shorewood Forest Utilities, Inc., by consent.

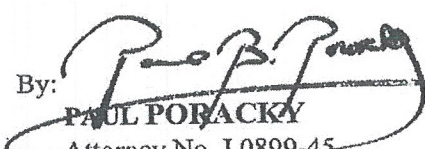
SCHAFER & SCHAFER, LLP
Attorneys for Plaintiffs

By:

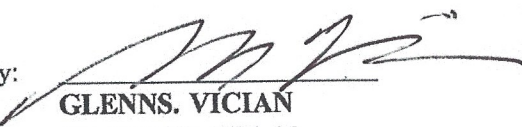

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By:


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ASSIGNMENT AND COVENANT NOT TO EXECUTE

This agreement made and entered into this ____ day of _____, 2020, by and between Greg Schafer, individually and on behalf of all others similarly situated and Shorewood Forest Utilities, Inc.

WHEREAS, plaintiffs have initiated an action for damages against various defendants, including Shorewood Forest Utilities, Inc., which action is pending in the Porter Superior Court, Valparaiso, Indiana as Cause No. 64D02-1705-CT-004698 (the "Lawsuit"), and

WHEREAS, the claims brought by plaintiffs arise out of the negligent and wrongful acts of the Board of Directors of Shorewood Forest Utilities, Inc., and in particular, Greg Colton, Dan Clark, Ken Buczek and Terry Atherton during and prior to the calendar year of 2017, and

WHEREAS, plaintiffs claim in the pending lawsuit that the Board of Directors of Shorewood Forest Utilities, Inc. were negligent and committed wrongful acts causing damage to the plaintiffs. That said wrongful acts include, but not limited to, errors, omissions, misstatements, misleading statements, neglect, breach of their duties, breach of their fiduciary duty to act in the best interests of its members and failed to follow the bylaws, all of which caused damage to plaintiffs, and

WHEREAS, at the time of the above mentioned claim, Shorewood Forest Utilities, Inc., Greg Colton, Dan Clark, Ken Buczek and Terry Atherton were insureds under a policy of insurance issued to Shorewood Forest Utilities, Inc. by Western World Insurance Group/Stratford Insurance Company under policy number BRL0013560, which policy provided a maximum combined limit of liability in the amount of \$1,000,000.00, and

WHEREAS, plaintiffs demanded sums far in excess of the policy limits including a demand for \$9,616,978.86 on June 11, 2018 and has incurred additional attorney fees, damages and costs

since said demand. That plaintiffs have agreed to settle for the policy limits against the named defendants.

WHEREAS, Western World Insurance/Stratford Insurance has rejected plaintiffs' settlement demand and refused to pay the \$1,000,000.00 policy limits and further, has denied coverage as various claims by plaintiffs exposing defendants, and each of them, to an excess policy limits verdict.

WHEREAS, the parties to this agreement believe that the failure to settle for the policy limits and denial of coverage is wrongful and constitutes a breach of such contract of insurance and breach of the insurance company's duty to deal in good faith with its insured. Further, Western World Insurance/Stratford Insurance have placed their financial interest ahead of its insured and have evaluated the claim based on its policy limits rather than a potential jury verdict with compensatory and punitive damages.

WHEREAS, Shorewood Forest Utilities, Inc., is desirous of entering into a settlement agreement with plaintiffs in order to protect itself from significant potential personal liability for the claims brought by plaintiffs, and at the same time, allow plaintiffs to attempt to collect their claims in excess of the policy limits, pursuant to an assignment to plaintiffs, of the rights of Shorewood Forest Utilities, Inc., against Western World Insurance/Stratford Insurance, and

WHEREAS, the parties hereto have agreed upon a basis for settlement of the pending claims of plaintiffs against Shorewood Forest Utilities, Inc.

NOW, THEREFORE, it is hereby agreed by and between plaintiffs, Greg Schafer, individually and on behalf of all others similarly situated, and defendant, Shorewood Forest Utilities, Inc., as follows:

1. Defendant, Shorewood Forest Utilities, Inc., shall allow a consent judgment, with interest on the judgment at the legal rate from the date of judgment, to be taken against it by plaintiffs in the action now pending in the Porter Superior Court, Valparaiso, Indiana, as Cause No. 64D02-1705-CT-004698 in the amount of Five Million Dollars (\$5,000,000.00), which is less than the settlement demand previously made by plaintiffs.

2. Defendant, Shorewood Forest Utilities, Inc., hereby assigns to plaintiffs all of the rights and claims against Western World Insurance/Stratford Insurance existing by reason of its contract of insurance issued to Shorewood Forest Utilities, Inc., and the negligence and/or bad faith of Western World Insurance/Stratford Insurance in failing to settle within the policy limits; denial of coverage; placing the insurance companies financial interest ahead of its insureds; failure to agree to indemnify its insured(s) against any excess policy limits verdict; breach of its duty to deal in good faith with its insureds and filing an unauthorized and improper Declaratory Judgment action further creating and exposing its insureds to additional damages.

3. In consideration of the agreement of Shorewood Forest Utilities, Inc. to allow judgment to be entered against it and its assignment to plaintiffs, Greg Schafer, individually and on behalf of all others similarly situated, of its rights and claims against Western World Insurance/Stratford Insurance, plaintiffs hereby agree that they will not levy any execution or seek to collect or enforce said judgment against Shorewood Forest Utilities, Inc., individually, nor in any way attach or impair any of its corporate or business income or assets. Rather, plaintiffs hereby warrant that they will attempt exclusively to recover the amount of said judgment and any post-judgment interest in an action against Western World Insurance/Stratford Insurance only based upon the insurance contract and the assignment included herein. Plaintiffs further represent and agree that they will never assign or transfer to any other individual or entity the judgment, any portion thereof,

or any of the rights which they have received by virtue of this agreement and the assignment contained herein. Further, plaintiffs agree that they will not cause the consent judgment to be filed or recorded in any jurisdiction or public office, apart from the Porter Superior Court, Valparaiso, Indiana, as Cause No. 64D02-1705-Ct-004698, except as may be necessary to pursue collection from Western World Insurance/Stratford Insurance.

4. Plaintiffs represent and agree that in entering into this agreement, they have not relied upon any statements or representations made by Shorewood Forest Utilities, Inc., as to the legal validity or viability of the claims of Shorewood Forest Utilities, Inc. against Western World Insurance/Stratford Insurance. Further, once plaintiffs', Greg Schafer, individually and on behalf of all others similarly situated, claim or action against Western World Insurance/Stratford Insurance seeking collection of the consent judgment has been finally determined and adjudicated, whether by way of settlements, judgments or appeals plaintiffs, Greg Schafer, individually and on behalf of all others similarly situated, will at that point cause a satisfaction of judgment to be entered of record, satisfying and releasing the consent judgment, irrespective of whether or to what extent plaintiffs have succeeded in collecting the full amount of the judgment from Western World Insurance/Stratford Insurance, and will dismiss the lawsuit against all parties in its entirety. Further, this Agreement is a covenant not to execute from plaintiffs, Greg Schafer, individually and on behalf of all others similarly situated, to defendant, Shorewood Forest Utilities, Inc., and is not in any way contingent upon whether or not plaintiffs, Greg Schafer, individually and on behalf of all others similarly situated, are successful in their claims against Western World Insurance/Stratford Insurance. It is understood, however, if it is determined that the consent judgment is invalid, this agreement shall be null and void and the parties shall be returned to status quo as if this agreement was never entered into by the parties.

5. Shorewood Forest Utilities, Inc. agrees to cooperate in all respects with the prosecution of the lawsuit seeking collection of the consent judgment against Western World Insurance/Stratford Insurance, including making its staff available as witnesses, and this Assignment agreement shall not impair or be a set off or credit against any damages that are being sought, or any judgment obtained against the remaining defendants in the above-described Class Action, or in any other litigation.

IN WITNESS WHEREOF, the parties have hereunto signed this Agreement on the date and year first above written.

Greg Schaffer
GREG SCHAFER, Individually and on
Behalf of All Others Similarly Situated

SHOREWOOD FOREST UTILITIES, INC.

By: *Margie Stiles*
President, MARGIE STILES

Anthony Cimino
Vice-President, ANTHONY CIMINO

Robin Carlascio
Secretary, ROBIN CARLASCIO